

MONTANA PUBLIC DEFENDER COMMISSION  
**BUDGET COMMITTEE MEETING**

Helena Regional Office  
139 North Last Chance Gulch, Helena, MT 59601

**November 16, 2015**

**MINUTES**

*(Approved at the April 26, 2016 meeting)*

**Committee Members Present**

Fritz Gillespie (Chair), Helena; Bonnie Olson, Marion; Margaret Novak, Chester

**Committee Members Absent**

Roy Brown, Billings

**Agency Team Members Present**

Bill Hooks, Chief Public Defender; Kristina Neal, Conflict Coordinator; Eileen Larkin and Koan Mercer, Appellate Defender Office; Harry Freebourn, Administrative Director; Wendy Johnson, Contract Manager; Peter Ohman, Training Coordinator; Carleen Green, Accountant; Marsha Parr, Case Management Support

**Interested Parties**

Malissa Williams, Office of Budget and Program Planning; Greg DeWitt, Legislative Fiscal Division

**1. Call to Order**

Chairman Gillespie called the meeting of the Budget Committee to order at 3:20 p.m.

**2. Approval of Minutes of April 17, 2014 Meeting (\*Action Item)**

Commissioner Novak moved to adopt the minutes of the April 17, 2014 meeting as drafted. Commissioner Olson seconded and the motion carried.

**3. Potential Uses for Commission Discretionary Funds**

The list of potential uses prepared by staff is not numbered by priority. That will be for the Committee to decide. Chairman Gillespie asked if there were additions to the list, and there were none. He asked that each person presenting a proposal discuss how the request addresses the statutory requirements in the first paragraph of the handout, and the estimated cost.

**1. Workload Study—Chief Hooks**

Chief Hooks proposes that the National Center for State Courts (NCSC) do a workload study that would involve every full time employee in the agency. It would follow the format that NCSC used in studying the Virginia public defender system, and would also involve contractors to a certain extent. The goal is to provide a means of

correlating current resources with ever escalating case growth. OPD's current case weighting system (CWS) is subject to skepticism because it was designed by the agency. The NCSC study would include support staff and investigators, and would provide an empirical basis on which to justify resource needs.

Chief Hooks described the proposed process in detail, including establishing a stakeholder committee; NCSC site visits; an employee survey; identifying case and task types; and actual time keeping by employees. The result is a model of what people are doing now. The next phase is the expert analysis of what is and what should be, identifying the number and types of positions needed to do the work as it should be done. The study would begin in January, 2016 and the final report would be issued in June, 2017. A number of steps including a preliminary report would be complete before the start of the 2017 legislative session. The estimated cost is \$208,000.

Commissioner Novak asked about the NCSC track record as far as accuracy and how much better other agencies have performed after an NCSC study. Chief Hooks isn't aware of a measurement regarding their performance; this type of study is fairly new. However, anecdotally, the model seems to work to help increase funding, and data collection by a third party appears to be the way things are going in public defense.

Chairman Gillespie said that the study would have credibility based on the work NCSC did for the district courts, but it is a secondary approach to the limitations on how to spend the funds. It doesn't address specific fiscal pressures, but is an indirect way to support the agency's goals.

Chairman Gillespie asked what the National Association for Public Defense (NAPD) can do for less money. Chief Hooks said that they can't do the scientific workload study. However, they can make suggestions on how to improve management, and on contractor issues and protocols. He believes the two consultations would work well in tandem. There is no fee for NAPD's services other than covering their costs (airfare, lodging, per diem). Chief Hooks is paying for the initial site visit from his budget. The final cost will depend on what we ask them to do and if it will be through on-site or remote consultation.

Commissioner Olson appreciates the idea of having every classification evaluated, but asked if Chief Hooks has considered prioritizing a study of only certain employees to reduce costs. Chief Hooks has not discussed that option with NCSC. He thinks including all employees is the best option, especially since there is no CWS for the non-attorney workforce. The trial division attorney CWS has been refined over time and reflects a "representative amount of time" for each case type. The appellate CWS is based on a national standard, and depends on the amount of work to be reviewed. Chairman Gillespie said that his perception is that attorneys are doing non-attorney work, so it seems an assessment of everyone's workload is appropriate.

Commissioner Novak commented that this study seems proactive instead of reactive; as we move forward and look at different ways to reorganize we will have good data. She sees it as a good use of funds.

2. Website Development—Peter Ohman

Mr. Ohman proposes contracting for improvements to the website. He has been working on content directed to clients and the general public regarding the kinds of cases OPD handles and what the process looks like. Having that information readily available on the website would save staff and attorney time currently spent on explanations to individuals. In addition, OPD's website is 10 years old and needs changes to the backend.

Chairman Gillespie asked if there are people in the executive branch we can contact to help with this. Mr. Freebourn said other state agencies are also struggling and he doesn't think we will find anything internally. He estimates the cost at \$25,000.

Chairman Gillespie finds the current website very informative, but he agrees it is not serving all stakeholders. Commissioner Olson would like to see clients benefit in a web redesign.

3. CRM Enhancements (online claim system)—Wendy Johnson

- a. Improvements to the contractor case analysis function would include data such as real time hours worked per case (not just for the current month, but since the case opened), which would be very helpful in monitoring expenses based on case types. Mr. Freebourn said it would improve internal controls, and it would be a way to implement soft caps. Other improvements would make the system more user friendly for attorneys, and would provide accounting enhancements. Estimated cost is \$15,000. Work would begin in March, 2016 and be complete in 30 days.
- b. The second group of enhancements would allow non-attorney vendors (investigators, mental health providers, transcriptionists and others) to submit claims online. Other forms, such as pre-approvals and transcription requests, might also be included, helping to reduce paper and improve workflow. Estimated cost is less than \$50,000. This work would also begin in March and be complete by the end of the fiscal year.

Both improvements would have minor ongoing renewal costs of about \$7000.

Commissioner Olson asked how this fits into the discretionary funding requirements. Ms. Johnson said that these improvements will increase efficiency and allow staff to approve bills from wherever they are (e.g., a regional deputy could work on claim approvals while waiting in court). Chairman Gillespie said that as a way of implementing soft caps, these enhancements deal with unforeseen financial pressures so it fits right in. Mr. Freebourn will include advantages as well as costs and timelines to present for the December Commission meeting.

4. Case Management Program Enhancements—Marsha Parr  
Journal Technologies has an Application Programming Interface (API) tool that can bring information from an outside source (such as the county attorney's office) and download it directly into OPD's case management program. The goal would be for OPD to populate new cases from the information that the county attorney has uploaded into the API. Discovery could also be automatically added to the case. The API would also allow contract attorneys and eventually even clients to access certain information through the cloud. This enhancement would be piloted in the Missoula office, because the city and the county both use the same case management program as OPD. It would reduce the amount of data entry and help to reallocate people in more meaningful ways, such as providing attorney support. There would be a one-time cost of approximately \$50,000, plus about \$7,000 annually. Once the API is purchased, the agency can determine how to use it. The start date is flexible.
5. Electronic Records Management Consultant—Harry Freebourn  
Paper records are being retained and destroyed according to the state general schedules and OPD's agency-specific retention schedule. We are rapidly moving to electronic records, and have the same obligation to destroy records at the end of the retention period, but we aren't doing it. Mr. Freebourn estimates \$10,000 for consultation on devising and implementing an electronic records management system.
6. New FTE
  - a. Executive Director—Commissioner Olson  
Commissioner Olson suggests supplementing the vacant Administrative Director position (following Mr. Freebourn's upcoming retirement) to fund an Executive Director. Mr. Freebourn estimates \$160,000 in salary and benefits for the new position. Vacancy savings and other unfilled positions in Program 1 might also help cover the gap. A new job description would need to be developed.
  - b. Program Requests—Eileen Larkin  
Ms. Larkin requests two additional appellate attorneys to address caseload pressures. The cost is \$100,000 per attorney per year if they are able to hire attorneys with five years of experience. This will have a direct and immediate impact on the appellate office and their clients.  
  
Mr. Freebourn noted that FTE are ongoing costs. Mr. Mercer said the appellate office has contracted out as many cases as the contractor pool would accept, and they still have two years' worth of unassigned cases, transcripts on hand. Chairman Gillespie asked what the contracting is doing to the appellate budget. Mr. Mercer said they don't know yet.
7. State Special Revenue—Commissioner Olson  
Commissioner Olson is pursuing a couple of possible solutions that don't involve

additional funding. She will report to the Commission in December, and withdrew this suggestion from consideration for discretionary funds.

#### **4. Public Comment**

Greg DeWitt, Legislative Fiscal Division offered some cautions. The expectation is that OPD will not make a supplemental request this biennium. He doesn't think that most of the requests meet the criteria attached to the appropriation, except the two FTE for the appellate office. He said that trying to sell IT system growth with FTE savings down the road doesn't fly because it expands what you can do, but doesn't make you more cost-effective. He said they are all great ideas, but not necessarily for these funds. He also suggested that the social worker pilot project would address the requirements.

Malissa Williams, Office of Budget and Program Planning, said that it is obvious that a lot of thought went into each item, and they can all add value to the agency. Some will help with short-term problems, others with the long-term picture. It would be useful to the budget office for OPD to create assumptions that will help determine the added value.

Commissioner Novak agrees that the FTE for the appellate office would meet the letter of the purpose statement, but she also thinks the workload study would help address every other issue and provide a good baseline. Commissioner Olson asked Mr. DeWitt for his opinion of the workload study. He said that it wouldn't relieve pressure in any way, but would be used to justify the request for more resources in the next session. Plus, the timing will be so late in the biennium that the perception will be that we spent the money and didn't do anything to fix the problems. Mr. Mercer suggested trying to get buy-in from the Task Force for the workload study.

#### **5. Recommendations for Full Commission (\*Action Item)**

This item was deferred. The Committee wanted time to process the proposals before prioritizing their recommendations. Chairman Gillespie expressed his appreciation both for the time the staff has put into this, and that no one has said other people's items aren't worthy proposals. When the Committee reconvenes, they will take more input and prioritize the requests. Commissioner Novak asked that no new proposals be presented at the next meeting.

#### **6. Recess**

Commissioner Olson moved to recess. Commissioner Novak seconded and the motion carried. The meeting recessed at 5:50 p.m. and will reconvene by phone next week for further discussion and prioritization.

***The Committee reconvened in the Helena Regional Office and by conference call on November 23, 2015.***

**1. Call to Order**

Chairman Gillespie called the meeting to order at 1:00 p.m. Commissioners Novak and Olson were again in attendance. Commissioner Brown was absent.

**2. Continue Discussion of Potential Uses for Commission Discretionary Funds**

Chairman Gillespie began by saying that the Committee doesn't have to recommend spending the entire amount right now, but could recommend holding an amount in reserve to see what else might develop. Mr. Freebourn assured Chairman Gillespie the FY 16 funds can be carried over into FY 17.

Commissioner Olson is concerned that the funds should be reserved to prevent the need for a supplemental request. Chairman Gillespie doesn't think holding the funds meets the spirit of the appropriation. Pressures on the agency will continue to grow if nothing is done to address them, and there is no guarantee that reserving the funds will prevent a supplemental situation.

Commissioner Olson assured Mr. Mercer that she sees the need for additional appellate staff, but she wants to ensure that the new chief appellate defender does the hiring; if the chief hire occurs at the December meeting, her concern will be addressed. She is also reluctant to add two FTE because that would be a huge chunk of the available funds, and she thinks it would be wise to reserve some money. Commissioner Olson completely supports the workload study, saying it will provide outside credibility.

Commissioner Novak remarked on Mr. DeWitt's earlier comments. She thinks this is an ongoing reflection of what happened during the session—OPD had the support of the governor's office, but not of the legislature. She doesn't see that holding back on spending the discretionary funds provided by the Governor will persuade the legislature to provide more funding in the future. She favors starting the workload study and hiring one appellate FTE at this time.

Chairman Gillespie said that the Committee will have the chance to discuss their recommendations with Task Force members and the budget office before the December 11 Commission meeting. The Committee will not be making decisions today that can't be retracted.

Commissioner Olson asked if there is information available about the cost of a specific kind of case based on contractor claims. That kind of data and analysis would be available by enhancing the CRM system, but hasn't been done using the paper claim system. We currently lack the management tools to determine how much it costs to contract out "the average DUI" or any other type of case, so we don't know how effectively or responsibly resources are being used. Right now we have no way to know how much the appellate office's efforts to contract out every case possible will cost.

### **3. Public Comment**

Chairman Gillespie said that some of the people present have a vested interest in the recommendations, and he invited everyone to comment.

Mr. Freebourn said that in terms of addressing a possible supplemental, Item 3 (a), to enhance the online billing system, would provide a valuable tool in trying to control contractor costs. An FTE or contractor to analyze the information generated might also be needed. He sees this item as providing an immediate impact on the agency.

Ms. Johnson agreed that Item 3 (a) will meet some of the needs that have been identified; right now we can't even estimate what a contract case is going to cost.

Ms. Neal concurs with Ms. Johnson and Mr. Freebourn. She also supports having an IT or admin person to run reports and do the analysis from the enhanced billing system.

Mr. Mercer thanked the Committee for its support and appreciates any resources that might be provided. He said that the workload study would be especially important to the appellate office for developing a more nuanced case weight, which would then give them a better idea of costs.

Chief Hooks is proud of the work Ms. Neal, Ms. Johnson, and other Program 1 staff have done on the CRM system, which has been a work in progress for quite some time. He thinks the enhancements will greatly benefit the cost projections going forward. The workload study has been under discussion since the middle of the last legislative session. Chief Hooks had hoped to have grant funding for this, but thinks it is still worthwhile even though the funding didn't materialize.

Mr. DeWitt remarked that he gave his outside perspective last week.

Ms. Williams reported that the budget office has identified that each option would meet the original intent of the funds. As far as holding the funds in reserve, she said it is important to use the funds for current issues within this biennium.

### **4. Recommendations for Full Commission (\*Action Item)**

Commissioner Novak moved that the following recommendations be forwarded to the Commission:

- Begin the agency workload study—Item 1
- Allocate up to \$100,000 for enhancements to the online billing system—Item 3, (a) and (b), plus providing an analysis function
- Hire one FTE appellate defender immediately—Item 6 (b)

Commissioner Olson seconded and the motion carried.

### **5. Adjourn**

The meeting adjourned at 2:00 p.m.